



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: CWA - 174361

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 13, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Health Services' Division of Long Term Care in regard to IRIS benefits, a hearing was held on November 21, 2016, by telephone. The hearing was originally scheduled to occur on June 7, 2016. The petitioner requested a postponement due to illness. Her request was granted and the hearing was rescheduled for July 13, 2016, again rescheduled for August 16, 2016, and again rescheduled for September 21, 2016. Prior to each of those dates, the petitioner or one of her adult daughters requested that the hearing be postponed due to the petitioner's health. Each of those requests was granted. On September 20, 2016, a hearing notice was mailed to the petitioner indicating that a hearing would occur by telephone on October 20, 2016. That notice also stated that no further reschedules would be granted without verification of a medical emergency. On October 19, 2016, the petitioner's adult daughter contacted the undersigned administrative law judge (ALJ) to provide a telephone number at which the petitioner could be reached for the hearing the following day. On October 20, 2016 at the time of the scheduled hearing, the ALJ called the petitioner but the petitioner was experiencing obvious discomfort and difficulty speaking. In addition, there was a significant amount of background noise which made it impossible to hear the petitioner. The ALJ inquired as to whether the petitioner wanted someone else to speak on her behalf and whether her adult daughter was present. The ALJ was unable to understand the petitioner's reply or to discern if the petitioner had in fact replied. Thus, no hearing was conducted on October 20, 2016. Prior to ending the call, the ALJ explained to the parties that the hearing would be rescheduled and that a letter would be sent to the petitioner with specific instructions regarding the hearing.

On October 21, 2016, the ALJ mailed a letter to the petitioner explaining her right to have another person appear with or on her behalf at the time of the rescheduled hearing, provided contact information for two non-profit legal service agencies, and stated that the hearing office could make special hearing arrangements if the petitioner required them but that the petitioner would need to contact the ALJ and request those arrangements. No such request was received.

At the time of the hearing on November 21, 2016, the ALJ called the petitioner and she answered the telephone. At that time, she was able to make herself audible. Prior to going on the record, the ALJ asked the petitioner whether she intended to represent herself and/or whether a daughter or other individual would be participating in the hearing with or on the petitioner's behalf. She stated that her daughter was not present at the moment but indicated that her daughter might join in the hearing at some point. The petitioner also stated that she wanted to proceed with the hearing on her own at that point. The ALJ accordingly initiated the hearing and the respondent began to offer testimony. During the respondent's testimony, one of the petitioner's daughters joined the hearing and made her presence known. She expressed concern about the hearing proceeding in light of her mother's health. The ALJ explained that the petitioner had stated that she wanted to proceed on her own prior to the beginning of the hearing and

asked the adult daughter if she intended to begin participating in the hearing. The petitioner's daughter indicated that she did although she continued to object to the holding of the hearing. The ALJ then essentially began the hearing again to ensure that the petitioner's daughter had all relevant information and instructions. Specifically, The ALJ repeated the previously explained hearing procedures, reviewed previously marked exhibits, and instructed the respondent to begin her testimony again so that the petitioner's daughter could hear the entirety of the respondent's case.

The issue for determination is whether the agency properly seeks to involuntarily disenroll the petitioner from participation in the IRIS program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
The Management Group  
PO Box 7851  
Madison, WI 53707-7851

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a participant in the IRIS program.
3. The Management Group (TMG) is an "IRIS Consultant Agency" certified by the Department of Health Services. TMG staff members work directly with IRIS participants to assist them in accessing IRIS program benefits.
4. On May 5, 2016, the IRIS Section Chief of the Department of Health Services (DHS) mailed the petitioner a Notice of Action which stated, in relevant part: "Numerous attempts were made to have [the petitioner] complete her participant education forms, complete a request of information, Support Home Care hours tool, and the Caregiver Daily Task Schedule. Based on failure to comply with IRIS Program requirements, you no longer meet eligibility to remain enrolled in the IRIS Program and will be disenrolled effective 5/20/2016."
5. On May 13, 2016, the petitioner submitted a request for fair hearing regarding the respondent's decision to disenroll her prior to the proposed effective date of the disenrollment.

6. The petitioner has been receiving ongoing IRIS benefits pending the outcome of this appeal.
7. On November 16, 2016, the petitioner submitted the required participant education forms referenced in the Notice of Action to TMG.
8. As of the date of the hearing, TMG no longer requires IRIS enrollees to submit a Supportive Home Care hours tool.
9. As of the date of the hearing, the petitioner had not submitted a signed “request of information” form (i.e., a consent form allowing the IRIS agency to communicate with her health care provider) or a caregiver daily task schedule to TMG.

### **DISCUSSION**

The IRIS program is a Medical Assistance waiver obtained by the State of Wisconsin from the Centers for Medicare and Medicaid Services (CMS) pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA) and section 1915(j) of the Social Security Act. Generally speaking, IRIS is a fee-for-service, self-directed personal care program that serves frail elders, people with physical disabilities and people with developmental disabilities. The IRIS waiver application approved by CMS is available on-line at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Downloads/WI0485.zip>. State policies governing administration of the IRIS program are included in the *IRIS Policy Manual* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>) and *IRIS Work Instructions* (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>).

The above-referenced CMS approved waiver application provides the following authority to the state to involuntarily disenroll IRIS participants:

**Involuntary Termination of Participant Direction.** Specify the circumstances when the State will involuntarily terminate the use of participant direction and require the participant to receive provider-managed services instead, including how continuity of services and participant health and welfare is assured during the transition:

The criteria for involuntary disenrollment from the IRIS waiver include: 1) the participant’s health and safety is jeopardized; 2) purchasing authority is mismanaged; or 3) *the enrollee refuses to report information necessary to adequately monitor the supports and services per his or her [Individual Support and Service Plan]*. The decision to involuntarily disenroll a participant from the IRIS waiver remains under the direct authority of the [State Medicaid Agency] and participants are properly notified of their Fair Hearing rights. [Emphasis added.]

*Waiver WI.0485.R01.00, Appendix E-1: Overview (12 of 13).*

In turn, the *IRIS Policy Manual* at Section 13.8B provides:

The Department of Health Services and the IRIS [Self-Directed Personal Care] Oversight Agency reserves the right to involuntarily disenroll IRIS SDPC participants when any of the following conditions are present:

1. The participant’s health and/or safety are jeopardized
2. The participant mismanages his/her purchasing authority
3. *The participant refuses to report information necessary to adequately monitor the situation;* or

4. The participant chooses to move to an ineligible living situation . . .  
[Emphasis added.]

The *IRIS Work Instructions* at Section 7.1A.1 specifically state that the department “reserves the right to disenroll IRIS participants based on noncompliance with IRIS policy in the following areas . . . Refusal to comply with IRIS Program requirements.” The term “refusal to comply with IRIS program requirements” is defined as follows:

Refusing to complete tasks that are required for IRIS program participation, including following IRIS policies and work instructions. Tasks required to maintain functional and financial eligibility are not included in this definition. Examples include, but are not limited to, refusing to complete a behavior support plan, refusing to develop an emergency backup plan, or refusing to sign the Individual Support and Service Plan (ISSP). . .”

*IRIS Work Instructions*, Section 7.1A.1. #8.

In this case, the Notice of Action states that the department is disenrolling the petitioner based on her “refusal to comply with IRIS Program requirements”; specifically, requirements that she complete and/or sign the following documents: 1. participant education forms; 2. request of information (i.e., consent for release of medical information; 3. supportive home care hours tool, and 4. caregiver daily task schedule. As of the date of the hearing, the petitioner had signed the participant education forms and was no longer required to submit a supportive home care hours tool. However, the petitioner had still not submitted Release of Information or caregiver daily task schedule. The petitioner’s adult daughter asserted that her mother never received those forms. TMG offered case notes by an IRIS consultant who previously worked with the petitioner and testimony by that same consultant which credibly demonstrate that the petitioner was given an opportunity to sign the Release of Information form on various occasions and was mailed that same form as well as the caregiver daily task schedule on April 5, 2016. Throughout the hearing, the petitioner’s daughter made broad assertions that her mother, who is undisputedly seriously ill, *never* receives mail and has *never* received *any* forms from the agency. I simply do not find her assertion that the petitioner never received the required forms to be credible.

It is apparent that the petitioner and her family did not have a smooth working relationship with the IRIS Consultant and it is reasonable to infer that this less than harmonious relationship resulted in a decision by the petitioner and her family to not comply with the IRIS Consultant’s reasonable requests and instructions. It is not my job to assess the reason for the contentious relationship or to assign blame. It is simply my job to determine whether a preponderance of the evidence supports the agency’s position that it properly seeks to involuntarily disenroll the petitioner from the IRIS program. I find that there is sufficient evidence to establish that the petitioner refused to comply with IRIS program requirements by not submitting the Release for Information and caregiver daily task schedule. The agency therefore properly seeks to involuntarily disenroll the petitioner from the IRIS program.

I also note that, during the hearing, the TMG asserted new reasons for disenrollment that were not identified in the May 5, 2016 Notice of Action including but not limited to a failure by the petitioner to maintain required contact with TMG and overspending of the IRIS budget. Since I am upholding the agency’s disenrollment based on the reasons actually included in the Notice of Action, it is not necessary to consider these new assertions by the agency.

Finally, I note that the agency did not challenge, and I do not doubt, the statements by the petitioner’s daughter regarding her mother’s poor health. IRIS program policies require the IRIS Consultant Agency

to assist individuals who are involuntarily disenrolled in accessing needed services through other programs and to attempt to ensure a continuity of needed care. In other words, even though the petitioner will be disenrolled from the IRIS program, other long term care and health care services may be available to her through other programs.

### **CONCLUSIONS OF LAW**

The agency properly seeks to involuntarily disenroll the petitioner from the IRIS program as a result of her refusal to comply with IRIS program requirements.

**THEREFORE, it is ORDERED**

The petitioner's request for appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

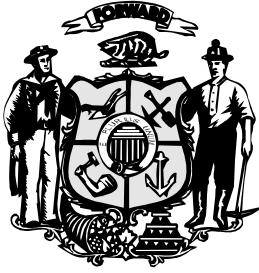
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of January, 2017

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 9, 2017.

Bureau of Long-Term Support